

Office of the Attorney General  
State of North Dakota

Opinion No. 85-38

Date Issued: October 11, 1985

Requested by: Senator John M. Olson

--QUESTIONS PRESENTED--

I.

Whether a financial institution's disclosure to a realtor or closing agent of a customer's outstanding indebtedness on specific real property in relation to the sale or transfer of the property falls within the exception of N.D.C.C. § 6-08.1-02(6).

II.

Whether a financial institution's disclosure to a business of the sufficiency of a customer's account to cover a check issued by the customer to the business falls within the exception of N.D.C.C. § 6-08.1-02(6).

--ATTORNEY GENERAL'S OPINION--

I.

It is my opinion that a financial institution's disclosure to a realtor or closing agent of a customer's outstanding indebtedness on specific real property in relation to the sale or transfer of the property falls within the exception of N.D.C.C. § 6-08.1-02(6).

II.

It is my further opinion that a financial institution's disclosure to a business of the sufficiency of a customer's account to cover a check issued by the customer to the business falls within the exception of N.D.C.C. § 6-08.1-02(6).

--ANALYSES--

I.

N.D.C.C. Ch. 6-08.1 was enacted by the Legislative Assembly with the purpose of establishing specific statutory guidelines for financial institutions in responding to requests for disclosure of customer information. Generally, N.D.C.C. Ch. 6-08.1 prohibits disclosure of customer financial information in the absence of

express customer consent or valid legal process. However, the requirements of N.D.C.C. Ch. 6-08.1 do not apply to:

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6. The exchange in the regular course of business of customer credit information between a financial institution and other financial institutions or commercial entities, directly, or through a customer reporting agency.

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N.D.C.C. § 6-08.1-02(6).

The absence of a statutory definition of 'commercial entity' necessitates a determination of its ordinary meaning. N.D.C.C. § 1-02-02. Although the legislature has not defined 'commercial entity,' it has articulated a definition of 'business entity' in N.D.C.C. Ch. 51-22. Inasmuch as 'commerce' is generally considered to be synonymous with 'business,' Webster's New World Dictionary, 285 (2d Ed. 1982), the legislature's definition of 'business entity' is persuasive in determining the ordinary meaning of 'commercial entity.'

N.D.C.C. § 51-22-01(1) provides:

51-22-01. DEFINITIONS. As used in this chapter:

1. 'Business entity' means a sole proprietorship, partnership, corporation, association, or other group, however organized and whether or not organized to operate at a profit, doing business in this state.

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Apart from N.D.C.C. § 51-22-01(1), the ordinary meanings of 'commercial' and 'entity' yield an equally broad definition of 'commercial entity.' The word commercial may be defined as 'of, or connected with commerce or trade.' Webster's New World Dictionary, 285 (2d Ed. 1982). Entity has been defined as 'a thing that has a definite, individual existence. . . .' Id. at 467.

The ordinary meaning of 'commercial entity,' thus, contemplates virtually any organization doing business. As such, the plain meaning of 'commercial entity' would include realtors and closing agents transacting business in this state.

A further requirement of N.D.C.C. § 6-08.1-02(6) is that the exchange of credit information be made in the 'regular course of business.' 'Regular course of business' has been interpreted as

meaning 'in the inherent nature of the business in question, and in the method systematically employed for the conduct of the business as a business.' Missouri Valley Walnut Co. v. Snider, 569 S.W.2d 324, 328 (Mo. Ct. App. 1978). Hence, whether the exchange of credit information is in the 'regular course of business' necessarily depends on the factual circumstances of each particular case. However, it is my opinion that disclosure of a customer's outstanding principal and interest balances to a realtor or closing agent participating in the sale or transfer of the customer's mortgaged property would fall within the scope of 'regular course of business.'

It is my opinion that a financial institution's disclosure to a realtor or closing agent of a customer's outstanding indebtedness on specific real property in relation to the sale or transfer of the property falls within the exception of N.D.C.C. § 6-08.1-02(6). Although a financial institution is excepted from the general requirements of N.D.C.C. Ch. 6-08.1 in such a situation, N.D.C.C. § 6-08.1-02(6) does not mandate that the financial institution comply with the disclosure request. Rather, disclosure pursuant to N.D.C.C. § 6-08.1-02(6) is strictly a discretionary matter for each individual financial institution.

## II.

The above interpretative analysis of 'commercial entity' and 'regular course of business' would also apply in determining whether the exception of N.D.C.C. § 6-08.1-02(6) encompasses a financial institution's disclosure to a business regarding the sufficiency of a customer's account to cover a check issued by the customer to the business. The broad interpretation of 'commercial entity' would undoubtedly comprehend the typical business. Furthermore, it is my opinion that a business' request for the adequacy of a customer's account balance, and the financial institution's response thereto, would fall within the scope of 'regular course of business.'

Therefore, it is my opinion that a financial institution's disclosure to a business of the sufficiency of a customer's account to cover a check issued by the customer to the business falls within the exception of N.D.C.C. § 6-08.1-02(6). As mentioned above, disclosure pursuant to N.D.C.C. § 6-08.1-02(6) is discretionary and not mandated by law.

--EFFECT--

This opinion is issued pursuant to N.D.C.C. § 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts.

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